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SOUTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

NOUR EDDINE ELASALI, Plaintiff, vs. SUN DIEGO, et. al., Defendants.	CASE NO. 07-CV-2272 W (JMA) **ORDER (1) DENYING PLAINTIFF'S MOTION TO PROCEED IN FORMA PAUPERIS (Doc. No. 2); (2) DENYING PLAINTIFF'S REQUEST FOR APPOINTMENT OF COUNSEL (Doc. No. 3)**

On December 3, 2007 Plaintiff Nour Eddine Elasali ("Plaintiff"), proceeding *pro se*, commenced this action against Defendants Sun Diego, Rich Illes, Scott McLoud, and John Swets alleging employment discrimination. (Doc. No. 1.) Plaintiff now seeks *in forma pauperis* ("IFP") status and appointment of counsel. (Doc. Nos. 2, 3.) For the reasons outlined below, the Court **DENIES** Plaintiff's IFP motion, **DENIES** Plaintiff's request for appointment of counsel, and **DISMISSES WITHOUT PREJUDICE** Plaintiff's Complaint.

The determination of indigency falls within the district court's discretion. California Men's Colony v. Rowland, 939 F.2d 854, 858 (9th Cir. 1991), *reversed on other grounds*, 506 U.S. 194 (1993) (holding that "Section 1915 typically requires the reviewing court to exercise its sound discretion in determining whether the affiant has satisfied the statute's requirement of indigency."). It is well-settled that a party need not be completely destitute to proceed in forma pauperis. Adkins v. E.I. DuPont de Nemours & Co., 335 U.S. 331, 339-40 (1948). To satisfy the requirements of 28 U.S.C. § 1915(a), "an affidavit [of poverty] is sufficient which states that one cannot because of his poverty pay or give security for costs ... and still be able to provide himself and dependents with the necessities of life." Id. at 339. At the same time, however, "the same even-handed care must be employed to assure that federal funds are not squandered to underwrite, at public expense, ... the remonstrances of a suitor who is financially able, in whole or in material part, to pull his own oar." Temple v. Ellerthorpe, 586 F.Supp. 848, 850 (D.R.I. 1984).

District courts, therefore, tend to reject IFP applications where the applicant can pay the filing fee with acceptable sacrifice to other expenses. See, e.g., Stehouwer v. Hennessey, 851 F.Supp. 316, (N.D.Cal. 1994), *vacated in part on other grounds*, Olivares v. Marshall, 59 F.3d 109 (9th Cir. 1995) (finding that district court did not abuse discretion in requiring partial fee payment from prisoner with $14.61 monthly salary and $110 per month from family); Allen v. Kelly, 1995 WL 396860 at *2 (N.D. Cal. 1995) (Plaintiff initially permitted to proceed in forma pauperis, later required to pay $120 filing fee out of $900 settlement proceeds); Ali v. Cuyler, 547 F.Supp. 129, 130 (E.D. Pa. 1982) (in forma pauperis application denied: "plaintiff possessed savings of $450 and the magistrate correctly determined that this amount was more than sufficient to allow the plaintiff to pay the filing fee in this action."). Moreover, the facts as to the affiant's poverty must be stated "with some particularity, definiteness, and certainty." United States v. McQuade, 647 F.2d 938, 940 (9th Cir. 1981).

Having read and considered the papers submitted, the Court finds that based on the current record, Plaintiff has failed to meet 28 U.S.C. § 1915's requirements for IFP status. Plaintiff's application establishes that he receives a monthly income of between $500 and $600. (*IFP Mot.* 2.) By contrast, Plaintiff's monthly expenses only total $150. (*IFP Mot.* 3.) Although Plaintiff has nearly nothing in his checking account, he owns an un-financed motorhome and in the last 12 months has received around $6000 from unemployment and $1500 from self-employment. (*Id.* 4, 6; *Appt. of Counsel Mot.* 5.) Moreover, Plaintiff has listed no dependents and no outstanding debts. Based on these facts, Plaintiff has failed to establish that paying the court filing fees would impair his ability to obtain the necessities of life. Adkins, 335 U.S. at 339.

Accordingly, the Court **DENIES** Plaintiff's application to proceed *in forma pauperis* without prejudice, and **DISMISSES** Plaintiff's Complaint **WITHOUT PREJUDICE** and with leave to amend. Plaintiff shall have until **January 11, 2008** to reinstate this case by (1) paying the $350 filing fee or submitting an amended IFP application, and (2) filing a First Amended Complaint. Plaintiff is advised that failure to meet either of these requirements may cause the termination of his case without further leave to amend. In light of the foregoing, Plaintiff's motion to appoint counsel is **DENIED** as moot.

IT IS SO ORDERED.

DATE: December 5, 2007

HON. THOMAS J. WHELAN
United States District Court
Southern District of California